

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1782 Session of
2009

INTRODUCED BY KORTZ, GEORGE, BELFANTI, BRIGGS, COHEN, CREIGHTON,
DENLINGER, FREEMAN, HARHAI, HARPER, HORNAMAN, HOUGHTON,
JOSEPHS, KOTIK, MANDERINO, MOUL, MUNDY, MUSTIO, SANTONI,
SIPTROTH, SWANGER AND VULAKOVICH, JUNE 25, 2009

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 25, 2009

AN ACT

1 Amending Titles 27 (Environmental Resources) and 42 (Judiciary
2 and Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, further providing for participation in
4 environmental law or regulation; and, in particular rights
5 and immunities, providing for participation in law or
6 regulation related to an issue in the public interest.

7 The General Assembly finds and declares as follows:

8 (1) This act will ensure that a frivolous lawsuit or a
9 Strategic Lawsuit Against Public Participation, popularly
10 referred to as SLAPP, can be resolved in a prompt manner by
11 permitting citizens to raise civil immunity to such suits
12 when filing a preliminary objection for legal insufficiency
13 of a pleading or demurrer or upon another appropriate motion
14 and to obtain a stay on discovery as provided for in this
15 act.

16 (2) A court should grant or deny relief on the
17 preliminary objection or other appropriate motion without
18 reserving the matter for further discovery.

19 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 7707 and Chapter 83 of Title 27 of the
3 Pennsylvania Consolidated Statutes are repealed:

4 [§ 7707. Participation in environmental law or regulation.

5 A person that successfully defends against an action under
6 Chapter 83 (relating to participation in environmental law or
7 regulation) shall be awarded reasonable attorney fees and the
8 costs of litigation. If the person prevails in part, the court
9 may make a full award or a proportionate award.

10 CHAPTER 83

11 PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION

12 § 8301. Definitions.

13 The following words and phrases when used in this chapter
14 shall have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Communication to the government." A written or oral
17 statement or writing made:

18 (1) before a legislative, executive or judicial
19 proceeding or any other official proceeding authorized by
20 law;

21 (2) in connection with an issue under consideration or
22 review by a legislative, executive or judicial body or any
23 other official proceeding authorized by law; or

24 (3) to a government agency in connection with the
25 implementation and enforcement of environmental law and
26 regulations.

27 "Enforcement of environmental law and regulation." Activity
28 relating to the identification and elimination of violations of
29 environmental laws and regulations, including investigations of
30 alleged violations, inspections of activities subject to

1 regulation under environmental law and regulations and responses
2 taken to produce correction of the violations.

3 "Government agency." The Federal Government, the
4 Commonwealth and any of the Commonwealth's departments,
5 commissions, boards, agencies, authorities, political
6 subdivisions or their departments, commissions, boards, agencies
7 or authorities.

8 "Implementation of environmental law and regulation."
9 Activity relating to the development and administration of
10 environmental programs developed under environmental law and
11 regulations.

12 § 8302. Immunity.

13 (a) General rule.--Except as provided in subsection (b), a
14 person that, pursuant to Federal or State law, files an action
15 in the courts of this Commonwealth to enforce an environmental
16 law or regulation or that makes an oral or written communication
17 to a government agency relating to enforcement or implementation
18 of an environmental law or regulation shall be immune from civil
19 liability in any resulting legal proceeding for damages where
20 the action or communication is aimed at procuring favorable
21 governmental action.

22 (b) Exceptions.--A person shall not be immune under this
23 section if the allegation in the action or any communication to
24 the government is not relevant or material to the enforcement or
25 implementation of an environmental law or regulation and:

26 (1) the allegation in the action or communication is
27 knowingly false, deliberately misleading or made with
28 malicious and reckless disregard for the truth or falsity;

29 (2) the allegation in the action or communication is
30 made for the sole purpose of interfering with existing or

1 proposed business relationships; or

2 (3) the oral or written communication to a government
3 agency relating to enforcement or implementation of an
4 environmental law or regulation is later determined to be a
5 wrongful use of process or an abuse of process.

6 § 8303. Right to a hearing.

7 A person who wishes to raise the defense of immunity from
8 civil liability under this chapter may file a motion with the
9 court requesting the court to conduct a hearing to determine the
10 preliminary issue of immunity. If a motion is filed, the court
11 shall then conduct a hearing and if the motion is denied, the
12 moving party shall have an interlocutory appeal of right to the
13 Commonwealth Court, during which time all discovery shall be
14 stayed.

15 § 8304. Intervention.

16 A government agency has the right to petition to intervene or
17 otherwise participate as an amicus curiae in the action
18 involving public petition and participation.

19 § 8305. Construction.

20 Nothing in this chapter shall be construed to limit any
21 constitutional, statutory or common law protections of
22 defendants to actions involving public petition and
23 participation.]

24 Section 2. Title 42 is amended by adding a section to read:

25 § 8340.2. Participation in law or regulation related to an
26 issue in the public interest.

27 (a) Immunity.--

28 (1) A person who acts in furtherance of the person's
29 right of petition or free speech under the Constitution of
30 the United States or the Constitution of Pennsylvania in

1 connection with enforcement or implementation of law or
2 regulation related to an issue in the public interest shall
3 be immune from civil liability in any action except where the
4 communication to the government agency is not genuinely aimed
5 at procuring a favorable governmental action, result or
6 outcome.

7 (2) A communication is not genuinely aimed at procuring
8 a favorable governmental action, result or outcome if it:

9 (i) is not material or relevant to the enforcement
10 or implementation of law or regulation related to an
11 issue in the public interest;

12 (ii) was knowingly false when made;

13 (iii) was rendered with reckless disregard as to the
14 truth or falsity of the statement when made; or

15 (iv) represented a wrongful use of process or abuse
16 of process.

17 (b) Stay of discovery.--The court shall stay all discovery
18 proceedings in the action upon the filing of preliminary
19 objections for legal insufficiency of a pleading or other
20 appropriate motion on the basis of immunity, provided, however,
21 that the court, on motion and after a hearing and for good cause
22 shown, may order that specified discovery be conducted. The stay
23 of discovery shall remain in effect until notice of the entry of
24 the order ruling on the preliminary objections or on another
25 appropriate motion.

26 (c) Admissibility of court determination.--If the court
27 determines that the plaintiff has established that there is a
28 substantial likelihood that the plaintiff will prevail on the
29 claim, neither that determination nor the fact of that
30 determination shall be admissible in evidence at any later stage

1 of the case, and no burden of proof or degree of proof otherwise
2 applicable shall be affected by that determination.

3 (d) Intervention.--The government agency involved in the
4 furtherance of a person's right of petition or free speech under
5 the Constitution of the United States or the Constitution of
6 Pennsylvania in connection with a public issue may intervene or
7 otherwise participate as an amicus curiae in the action
8 involving public petition and participation.

9 (e) Legal protections of defendants.--Nothing in this
10 section shall be construed to limit any constitutional,
11 statutory or common-law protections of defendants to actions
12 involving public petition and participation.

13 (f) Abuse of legal process.--In addition to other costs or
14 remedies allowed by general rule or statute, in any
15 administrative or judicial proceeding related to the enforcement
16 or implementation of law or regulation related to an issue in
17 the public interest, the agency or court shall award costs,
18 including reasonable litigation fees and court costs, if the
19 agency or court determines that an action, appeal, claim, motion
20 or pleading is frivolous or taken solely for delay or that the
21 conduct of a party or counsel is dilatory or vexatious.

22 (g) Definitions.--As used in this section, the following
23 words and phrases shall have the meanings given to them in this
24 subsection:

25 "Act in furtherance of a person's right of petition or free
26 speech under the United States Constitution or the Constitution
27 of Pennsylvania in connection with a public issue." Any written
28 or oral statement or writing made before a legislative,
29 executive or judicial proceeding, or any other official
30 proceeding authorized by law; any written or oral statement or

1 writing made in connection with an issue under consideration or
2 review by a legislative, executive or judicial body, or any
3 other official proceeding authorized by law; any written or oral
4 statement or writing made in a place open to the public or a
5 public forum in connection with an issue of public interest; or
6 any written or oral statement or writing made to a government
7 agency in connection with the implementation and enforcement of
8 law and regulation related to an issue in the public interest.

9 "Enforcement and implementation of law and regulation related
10 to an issue of public interest." Any activity related to the
11 identification and elimination of violations of law and
12 regulation and to the development of rules for the
13 administration of programs established under law or in
14 connection with an application for a permit, zoning change,
15 lease, license, certificate or other entitlement for use or
16 permission to act from any government agency.

17 "Government agency." The Federal Government, the
18 Commonwealth and all of its departments, commissions, boards,
19 agencies and authorities, and all political subdivisions and
20 their authorities.

21 "Litigation fees." Costs of litigation, including, but not
22 limited to, reasonable attorney and expert witness fees incurred
23 in connection with litigation.

24 Section 3. This act shall take effect in 60 days.